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In the Matter of

PROMOTION OF COMPETITIVE
NETWORKS IN LOCAL
TELECOMMUNICATIONS MARKETS

WT Docket No. 99-217

To: The Wireless Telecommunications Bureau

COMMENTS

PrimeLink, Inc. ("PrimeLink"), by its attorneys and pursuant to FCC Rule Section 1.415, respectfully submits these Comments in response to the *First Report and Order and Further Notice of Proposed Rulemaking In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket 99-217 ("FNPRM"), adopted October 12, 2000 and released October 25, 2000. Through these comments, PrimeLink supports the position that current exclusivity contracts between telecommunications providers and property owners of commercial and residential multiple tenant environments ("MTEs") should be allowed to remain in effect notwithstanding the Commission's prohibition of new exclusivity contracts in commercial MTEs.

Introduction

1. PrimeLink is a New York corporation headquartered at 1118 Route 9, P.O. Box 782, Champlain, New York 12919-0782. PrimeLink is a wholly-owned subsidiary of K & S Communications, Inc. which in turn is a wholly-owned subsidiary of Champlain Telephone Company, a rural telecommunications service provider in upstate New York. PrimeLink's interest in this proceeding stems from its position as lessee with an option to buy the telecommunications building and as lessee of the telecommunications plant on the property formerly known as the

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List A B C D E

Plattsburgh AirForce Base which is currently owned by the Plattsburgh Airbase Redevelopment Corporation (“PARC”). The lease agreements that PrimeLink has with PARC provides PrimeLink with exclusive rights to the provision of telecommunications services on the property.

Current Exclusivity Contracts Should Continue To Be Enforced

2. PrimeLink submits that telecommunications providers which are currently operating under an exclusivity contract with property owners of commercial and residential MTEs should not be subject to the Commission’s new prohibition on arrangements given that imposing an end to such existing arrangements would cause significant financial harm to those parties involved. In reliance upon its exclusivity arrangement with PARC, PrimeLink has spent approximately \$3 million purchasing telecommunications equipment and on renovations to the property. In addition, PrimeLink has received confirmation of a loan from Rural Utilities Service (RUS) which will enable PrimeLink to spend an additional \$10.5 million on capital build-out over the next five years. Although these amount may seem modest, for a small rural telecommunications provider such as PrimeLink, such outlays of funds represent a large portion of its capital budget.

3. If current contracts were to become unenforceable, telecommunications providers and property owners alike would be prejudiced. As the Commission is aware all contracts include language which protects the parties from various risks and liabilities associated with the deal. An action by the Commission which causes a contract suddenly to become null and void leaves both parties subject to a host of potential liabilities, financial and otherwise.

Small and Rural Telecommunications Providers Should Be Protected

4. In the alternative, if the Commission should decide to prohibit the enforcement of current exclusivity contracts, the Commission should create exceptions for small and rural telecommunications providers. In general, any decision the Commission makes on a new standard for compliance should take into account the abilities and needs of different types of telecommunications service providers. For example, the expense resulting from a change in Commission rules should be reasonable from the perspective of both the large service provider as well as the small and rural service provider. As noted earlier, PrimeLink has already spent \$3 million to perform under its exclusivity agreement with PARC at a 5,000 acre Air Force Base where it is currently serving 60 customers. This amount is a significant investment for a small and rural carrier such as PrimeLink, especially since it only serves a small area. In previous rulemakings the Commission has taken into account the effect of its actions on small and rural carriers. For example, in its December 10, 1995 Caller ID Order, the Commission issued a stay of its per call block and unblocking requirements in response to waiver petitions from several small rural carriers that claimed that providing blocking and unblocking was technically and economically infeasible.¹

5. Furthermore, the Commission should look carefully at PrimeLink's situation in the context of the "Small Business Regulatory Enforcement Fairness Act of 1996"² which provides, that federal agencies must "encourage the effective participation of small businesses in the Federal

^{1/} *Order and Fourth Notice of Proposed Rulemaking*, 10 FCC Rcd 13796, 13808 (1995).

^{2/} P.L. 104-121, 110 Stat. 847 (March 29, 1996) (hereafter, the "Fairness Act").

regulatory process”³ and “create a more cooperative regulatory environment among the agencies and small businesses that is less punitive and more solution-oriented.”⁴ PrimeLink submits that it is precisely the type of entrepreneurial small business that the Fairness Act was intended to assist. The spirit of these sections of the Fairness Act requires the Commission to take a hard look at the impact that a ban on enforcement of current exclusivity contracts with commercial MTEs would have on a small entity like PrimeLink. Requiring PrimeLink to essentially forfeit the \$3 million it has already spent to perform on its contract with PARC would most certainly thwart PrimeLink’s ability to effectively participate in the industry and can even be construed as punitive. PrimeLink should not be penalized for entering into a contract and beginning performance on it when at the time it had no reason to expect that the contract would be effectively nullified by a Commission action.

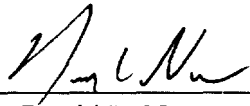
³/ *Id.* at Section 203(3).

⁴/ *Id.* at Section 203(6).

Accordingly, PrimeLink supports the continued enforcement of exclusivity contracts between telecommunications providers and commercial and residential MTEs which were effective prior to the effective date of the Commission's prohibition of such exclusivity contracts in commercial settings.

Respectfully submitted,

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